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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

MI22-2427

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Application Number

10/715,628

Filed

11-17-2003

First Named Inventor

Garó J. Derderian

Art Unit

1763

Examiner

Zervigon, Rudy

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

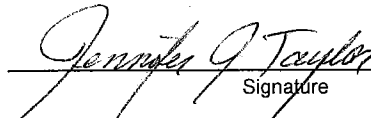
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 48,711

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


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January 31, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/715,628
Confirmation No. 4321
Filing Date November 17, 2003
Inventor Garo J. Derderian
Assignee Micron Technology, Inc.
Group Art Unit 1763
Examiner Zervigon, Rudy
Attorney's Docket No. MI22-2427
Title: Apparatus for Improved Delivery of Metastable Species

PRE-APPEAL BRIEF

Applicant requests review of the objection to the drawings under 37 CFR § 1.83(a). Applicant additionally requests review of the rejection of claims 1-17 under 35 U.S.C. § 102(b) as being anticipated by Gadgil (U.S. Patent No. 5,284,519); or under 35 U.S.C. § 103(a) as being rendered obvious by a combination of Gadgil and Lee (U.S. Patent No. 6,086,679).

Referring initially to the objection to the drawing the Examiner indicates that a dispersion head must be shown (present Action at pg. 2) and requests a 1:1 to correspondence with what is claimed and elements in the specification in support of the drawings (present Action at pg. 10). Referring to applicant's response filed April 24, 2006, such indicates with reference to Fig. 1 that such drawing specifically illustrates a disperser having numeric identifier 28. Applicant's specification at paragraph 18 indicates that disperser 28 can be a porous dispersion head or showerhead for example. The disperser which can be a porous dispersion head corresponds directly to numeric identifier 28 in an 1-to-1 correspondence; the 1-to-1 correspondence requirement is therefore met in the drawings as filed. Applicant is not required to depict a particular embodiment envisioned by the Examiner.

Referring next to the prior art rejection of claims 1-17, as noted at page 8 of applicant's response filed August 18, 2006, the Examiner relies on distinct embodiments disclosed by Gadgil for an anticipation rejection of claims 1 and 17. Neither of those embodiments anticipates either of

claim 1 or 17 and, as distinct embodiments, are non-combinable for a basis of an anticipation rejection. Further, there is not suggestion or motivation within the reference for combining such embodiments in the manner suggested by the Examiner and none is set forth by the Examiner. The Examiner has indicated at page 11 of the present Action that he is not attempting to combine embodiments. Accordingly, the Examiner fails to provide motivation for "combination" or "modification" to establish a *prima facie* case.

With respect to claims 1 and 17 the Examiner indicates that the claim 1 recited catalyst and the claim 17 recited carrier gas are merely intended uses (pp. 3 and 6 of the present Action) and therefore reads such limitations out of the claims. As set forth in applicant's response filed August 18, 2006 at page 8, line 20 through page 9, line 10; and the response filed April 24, 2006 at page 6, the grounds of rejection relied upon by the Examiner are unfounded. Upon applicant's request for reconsideration and withdrawal of the Examiner's position the Examiner blatantly refused (pg. 11, section 9). Since the intended use doctrine applies to an intended use of the claimed invention and not to structural elements recited in the body of a claim, the Examiner's reading out of structural elements in applicant's claim is improper.

Each of independent claims 1, 13 and 17 recites a deposition system or apparatus comprising a deposition chamber and a containment reservoir which is external to the deposition chamber, with the reservoir being in fluid communication with the deposition chamber through an inlet of the deposition chamber. The Examiner relies upon a combination of Gadgil, Fig. 1 and Fig. 2 combining distinct embodiments and defines the bottom of feature 38 of Fig. 2 as both an inlet port and an outlet port while nozzles 42 and 46 have clearly been identified by the specification for introducing gas into corresponding mixing chamber 40 and 44. As set forth at applicant's August 18, 2006 Action at page 9, it is unclear as to how the Examiner interprets Gadgil to provide selective fluid communication and containment within a chamber via feature 38 which the Examiner

refers to as both an inlet and an outlet port but which Gadgil identifies as a capillary group (col. 5, ll. 1-15 of Gadgil). Nor does the capillary group provide containment or selective communication (as conceded by the Examiner at page 12 of the present Action). Since each of claims 1, 13 and 17 recite containment reservoirs, and claim 1 specifically recites selective fluid communication from the containment reservoir, such claims are clearly not anticipated or rendered obvious by Gadgil.

The elements for which Lee is relied upon do not contribute toward suggesting the claims 1, 13 and 17 recited deposition chambers and reservoirs disposed external to the deposition chamber, or the claim 1 and 17 recited external reservoir configured containment of a metastable or activated specie. Accordingly, independent claims 1, 13 and 17 are allowable over the combination of Lee and Gadgil. Dependent claims 2-12 and 14-16 are allowable over Lee and Gadgil for at least the reason that they depend from corresponding allowable base claims 1 and 13.

Since the Examiner's rejection of claims 1-17 and the objection to the drawings are believed to be clearly erroneous; review of such rejection and objection is respectfully requested.

Respectfully submitted,

Dated: January 30, 2007

By: Jennifer J. Taylor
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